

Rights Mobilization and the Campaign to Decriminalize Homosexuality in Singapore

Lynette J. CHUA*

Assistant Professor of Law, National University of Singapore

Abstract

This paper analyzes how activists used a parliamentary petition to overcome legal and political barriers and mobilize openly for gay rights for the first time in Singapore. Unlike societies where rights mobilization has political legitimacy, exercising and claiming rights in the *de facto* one-party state are non-conformist behaviours and face greater limitations. Gay rights activists in Singapore not only struggle with the state and their opponents over the right to equality; compared to their counterparts in liberal democracies, they also have to overcome stronger restrictions on political access and civil-political liberties that enable or protect rights mobilization. This paper therefore describes and analyzes a politics of rights under authoritarian conditions and the complicated consequences of legal resistance and rights mobilization. Although the petition campaign transformed collective grievances, expanded activists' support base, and opened up new tactical possibilities, it also provoked intense, third-party opposition and foreclosed other avenues of mobilization.

Keywords: gay rights, rights mobilization, legal mobilization, social movements, social change

1. INTRODUCTION

On 21 August 2012, Singapore's highest court delivered judgment on the first case ever to contest the constitutionality of Section 377A, the Penal Code provision that criminalizes same-sex conduct between men. It ruled that a gay citizen has legal standing to challenge the provision as a violation of the equal protection clause, Article 12, in Singapore's Constitution, without having first to be prosecuted under it. Even though the case concerned only the preliminary issue of legal standing, it marked a historic moment for gay rights advocacy in authoritarian Singapore. On 30 November 2012, a gay couple relied on the ruling to file a lawsuit that substantively challenged the constitutionality of Section 377A. These two court cases, however, are by no means the first milestones for gay rights in Singapore. Nor are they

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the first times that gay rights activists publicly engaged in rights mobilization in the *de facto* one-party state. Five years before *Tan Eng Hong v. Attorney General* (“*Tan Eng Hong*”) and *Lim Meng Suang & Kenneth Chee Mun-Leon v. Attorney General* (“*Lim Meng Suang*”),¹ activists already gained access to Singapore’s political institutions to argue for gay rights and to campaign for the repeal of Section 377A.²

That campaign, known as Repeal 377A, forms the focus of this paper. How did campaign activists gain political access and, for the first time, publicly mobilize for gay rights in a state whose government uses law to stifle civil-political rights and control dissent, and whose courts lack a track record of upholding basic constitutional liberties? To understand these processes, I build on two core areas in law and society scholarship, rights mobilization and legal resistance, to examine the politics of gay rights in a non-Western liberal democracy. Compared to societies where rights mobilization is accepted and mainstream, in Singapore exercising and claiming rights are non-conformist behaviours and face greater barriers. Gay rights activists not only struggle with the Singaporean state and their opponents over the right to equality; they also have to overcome more restrictions on political access and civil-political liberties that enable or protect rights mobilization—existing features on the sociopolitical landscape that activists in liberal democracies often take for granted.³ In other words, unlike Western liberal democracies on which most law and society studies are premised, rights mobilization is a form of atypical politics under rights-adverse, authoritarian conditions. Paying attention to the socially embedded nature of rights mobilization, this paper examines how activists in the latter type of context interact with law and political norms (the informal rules) to gain formal institutional access and create a politically legitimated moment for rights mobilization.

In doing so, it details the ways in which law is used in rights mobilization to overcome legal and political barriers and their consequences in authoritarian settings, an understudied area in law and society scholarship. This is important for understanding societies where authorities simultaneously deploy law to push through economic reform and curtail political access, civil-political liberties, and rights. In these regimes, repression often manifests itself in the legitimized form of law rather than explicit physical violence. However, as this paper shows, law does not merely serve as an instrument of oppression; social actors also make use of it, mounting legal resistance to enable a politics of rights in an adverse environment. Such legal resistance has cumulative and complicated effects. On the one hand, it transformed the collective grievances of Singapore’s gay rights activists, expanded their support base, and opened up new tactical possibilities; on the other hand, it attracted a public and intense third-party opposition and foreclosed other avenues of mobilization.

Drawing from qualitative analysis of interviews with Singapore’s gay rights activists, their organizational materials, government documents, political statements, media reports, and counter-campaign materials, I found that after the Singaporean government ruled out any change to Section 377A in its Penal Code’s amendment bill, Repeal 377A campaigners invoked an

1. The High Court of Singapore, the court of first instance in *Lim Meng Suang* and *Tan Eng Hong*, upheld the provision’s constitutional validity in April and October 2013 respectively. Both Tan and the couple have since appealed to the Court of Appeal, the final court of resort, which will hear oral arguments in April 2014.

2. I use the term, “gay,” to refer to issues of concern to lesbians, gays, and bisexuals in Singapore. Transgender issues are excluded from my study. Transgender people in Singapore contend with different laws and challenges, and gay rights activists usually do not focus on their concerns.

3. The comparison is relative, of course, as democratic societies also have restrictions.

obscure legal procedure for petitioning Parliament. Using the petition process while playing to the political norms of non-confrontation and “social harmony,” they created a legitimate political event in the eyes of the ruling party and government, and transformed their grievance into a public rights discourse for the first time in Singapore. Their open demands for equal rights occupied legislative debates for two days and received wide coverage from state-controlled media. The collection of petition signatories brought together the local gay community and non-gay allies for the first time in Singapore, and bonded them over a common purpose. Although the campaign did not succeed in abolishing the law, it persuaded the prime minister to articulate a non-enforcement policy toward consensual, private acts. Despite also triggering a branch of Christian right conservatives to express open opposition, gay rights activists walked away from Repeal 377A with a more sophisticated understanding of the state and ruling party. The campaign indicated that political leaders were sympathetic but unwilling to expend their political capital for legislative repeal, creating the perception for activists that the leadership would prefer the courts to settle the controversy. Following the campaign, gay rights advocacy shifted tactics into two arenas: to engage Singaporean society on a larger scale to demonstrate that gay equality has broad-based support, and to pursue rights litigation with newfound confidence.

The rest of the paper proceeds as follow: first, I situate the analysis in relation to law and society studies on rights mobilization and legal resistance. After explaining the data collection and methods, I analyze Singapore’s socio-legal context, including the conditions for gays in Singapore, and then the Repeal 377A campaign specifically. In the “Conclusion,” I consider the campaign’s implications for gay rights mobilization in Singapore and, more broadly, the politics of rights in non-democratic settings.

2. RIGHTS MOBILIZATION AND LEGAL RESISTANCE

The study of rights mobilization is a core area of law and society where scholars engage in ongoing debates about the role of rights in bringing about social change. Among these studies are those that consider the ways in which rights serve as instrumental resources. Rights mobilization helps individuals gain access to political institutions.⁴ Collectively, activists can turn to courts to protect minority rights against prevailing majoritarian interests.⁵ Works outside and inside law and society show this to be the case with gay activism. Historian George Chauncey found that, as early as the 1930s, activists in American cities brought court challenges against prohibitions on gay bars.⁶ From the 1950s onwards, activist organizations began to litigate on anti-sodomy laws and other areas of discrimination.⁷

Such pursuit of rights raises concerns for law and society scholars who question the efficacy of rights. Some take a “myth of rights” perspective and argue that rights go unrealized, mired in policy-making and implementation.⁸ Some find rights to be elitist,⁹ or disempowering,

4. Zemans (1983).

5. Rosenberg (2008).

6. Chauncey (1994).

7. Vaid (1995); Bernstein (2002, 2003); Andersen (2005).

8. Scheingold (2004); Rosenberg, *supra* note 5.

9. Hull (2001); Nielsen (2004).

because the aggrieved may lack resources to fight legal battles, or perceive it to be a type of re-victimization process.¹⁰ Others point out that rights are too absolutist and individualistic,¹¹ or neglect concerns with communities and responsibilities.¹² Furthermore, critical scholars argue that rights assimilate the interests of marginalized groups rather than transform or reorganize social relations.¹³

Yet activists continue to pursue rights, even when courts no longer respond to their claims,¹⁴ and litigation has created backlash from opponents.¹⁵ One way to understand the tenacity of rights is to take a more expansive view, that is, acknowledge that rights *alone* may not be able to achieve social change, but also recognize that they do have something to contribute to social change. Despite their limitations, rights can be used as bargaining chips to threaten litigation against unmoving or recalcitrant opponents.¹⁶ Or they can stand as cultural symbols that empower and inspire the oppressed to see possibilities for change.¹⁷ Hence, when an issue is reframed as rights, its significance is also transformed. Perceived to bear the ability to correct a wrong, rights are seen as ethically sufficient principles of government.¹⁸ At the international level, if domestic activists can successfully portray their local grievances as matters of international human rights, they could attract the support of transnational groups and other governments.¹⁹ Conservative opponents thus struggle with progressive activists to recast equal rights for gays or other minority groups as “special rights,”²⁰ and their claimants as people with illicit or immoral purposes.²¹ As activists and their opponents continuously try to neutralize each other’s claims,²² rights mobilization becomes a fight over different versions of rights discourse. Furthermore, even if rights are not mobilized to claim legal redress, they help to reframe grievances so that activists or other individuals alter their identities and question institutionalized arrangements,²³ or change their consciousness and relationships with others.²⁴

Such rich accounts of rights mobilization in non-Western democracies, however, are fewer in law and society studies. Many focus on individuals’ legal consciousness.²⁵ Other studies that do consider rights mobilization caution that it could heighten state repression,²⁶ even attract deadly consequences.²⁷ Where the state adheres to black letter or thin notions of rule

10. Bumiller (1988).

11. Glendon (1991).

12. Merry (2006).

13. Brown (1996).

14. Meyer & Boutcher (2007).

15. Rosenberg, *supra* note 5.

16. McCann (1994); H. Silverstein (1996).

17. McCann, *supra* note 16; Polletta (2000); Andersen, *supra* note 7.

18. Scheingold, *supra* note 8.

19. Bob (2005, 2009).

20. Dudas (2008).

21. Goldberg-Hiller & Milner (2003).

22. Hewitt & McCammon (2004). In fact, Christian right opponents of gay rights frequently leverage on legal procedures to set their agenda against gay activism or organize out gay issues. See e.g. Dugan (2004); Miceli (2005).

23. Polletta, *supra* note 17; Barclay *et al.* (2009); Albiston (2010).

24. Engel & Munger (2003).

25. See e.g. Gallagher (2006); Engel & Engel (2010); Li (2010); Boittin (2013); Miyazawa (1987); Tanase (1990).

26. Currier (2009).

27. Massoud (2011).

of law,²⁸ activists risk losing political legitimacy if they violate legal restrictions to claim rights.²⁹ Moreover, as the data analysis below will show, judicial decisions in rights-adverse jurisdictions, such as Singapore, produce “radiating effects”³⁰ that deter rather than encourage rights mobilization.

What this means is that rights debates in law and society can benefit from further examination of mobilization in diverse contexts, especially by paying attention to how social actors overcome legal and political barriers to do so. In short, existing scholarship by and large presumes that rights mobilization has political legitimacy.³¹ This may well be the case with Western liberal democracies, upon which many law and society studies are based, but may not hold true under authoritarian or less democratic conditions. The latter have tighter restrictions on basic civil-political liberties and political access, features that facilitate and protect mobilization tactics, such as demonstrations, public speaking, litigation, and lobbying. Therefore, where rights lack cultural resonance or face hostility, actors not only claim rights for their intended causes but they also deal with tougher prohibitions and higher risks that concern their counterparts less in Western democracies. Studies that find increasing rights mobilization in China³² suggest that actors under authoritarian conditions nevertheless cannot deploy tactics in the same way as their counterparts do in democratic societies.³³ Hence, the pathways of rights mobilization may be distinct.³⁴

Situated in the foregoing discussion, this paper unpacks the rights mobilization processes of Singapore’s gay rights activists, *even though* they perceive that rights “don’t work” with their government: they engage in legal resistance, thereby connecting this paper to another established area of law and society research. Exploring how actors deploy law to mobilize rights and seek social change is particularly important in states that simultaneously harness legal power to advance an economic agenda while exerting social control. Legal regulation or “channelling”³⁵ renders repression subtler, as it allows room for dissent while obscuring law’s repressive effects, making them appear more indirect and acceptable.³⁶ In the context of gay rights, homophobic authorities use the licensing of bars and laws against sodomy to limit the rights of gays to assemble and express themselves in public.³⁷ Arrests and prosecutions also cost time, money, and physical discomfort.³⁸ When prolonged, these legal processes sap the material resources and will of activists.³⁹ In fact, the mere existence of these legal threats can discredit those who violate them, and scare off supporters.⁴⁰

28. The debates over rule of law are numerous and complicated. Singapore’s state-championed version can be described as authoritarian (Rajah 2012) or thin, as opposed to thick versions that embrace certain fundamental values, such as liberalism (Peerenboom 2004).

29. Chua (2012).

30. Galanter (1983).

31. But see Lovell (2012), who questions the conventional claim that Americans have a deeply entrenched rights consciousness.

32. O’Brien & Li (2006); Goldman (2007).

33. O’Brien & Li, *supra* note 32. Also see Johnston (2006) on Eastern European regimes.

34. See e.g. Fallon (2003); Chua, *supra* note 29.

35. Earl (2006).

36. Earl (2003); Fernandez (2009).

37. Cain (1993); Chauncey, *supra* note 6; Bernstein (2002).

38. Feeley (1979); Barkan (2006).

39. Earl (2005).

40. *Ibid.*; Barkan, *supra* note 38.

Nevertheless, the scholarship shows that the oppressed can fight back with legal resistance—defy legal controls or make use of law to challenge other forms of oppression.⁴¹ In the former type of legal resistance, some people act covertly against oppressive laws. They avoid openly confronting authorities but resist their control in subtle ways without getting caught.⁴² Others act publicly. They stage protests, file lawsuits, or expose acts of legal repression to raise awareness,⁴³ win public support,⁴⁴ or attract media attention.⁴⁵ In the latter type of legal resistance, individuals and groups leverage laws, regulations, or legal procedures to make claims. For instance, US birth activists used state legislative committee procedures to dominate space, obtain legal legitimacy, and earn procedural justice.⁴⁶ By invoking such cultural values as choice and motherhood in the committee hearings, they transformed public debates on midwifery's legality and won legislative support for its licensure.⁴⁷ Further, because law helps to define what counts as legitimate grievances and the conditions under which they may be publicly addressed,⁴⁸ activists continue to make use of judicial processes to expose state failures and secure political benefits, even though they frequently lose the legal case in court.⁴⁹ Where there is legal reform, they also use law to reshape other norms and reconstruct understandings of how life should be organized.⁵⁰

This paper, therefore, brings together and extends law and society insights from two long-standing research traditions, rights mobilization and legal resistance, to an understudied area in the scholarship. It examines how activists in an authoritarian setting resist barriers against rights mobilization, interact with law and political norms to enact legal resistance, and claim gay rights. It elucidates the use of legal resistance to construct a politics of rights, and explains the outcome's impact on future mobilization.

3. DATA COLLECTION AND METHODS

This paper is based on an ethnographic study of Singapore's gay rights movement.⁵¹ Conducted mainly during 2006 and 2009–10 and intermittently from 2010 onwards, the study consists of semi-structured interviews, field observations, and analysis of documentary materials. Although I highlight in this paper the materials most salient to the Repeal 377A campaign, I draw from analysis of data spanning the broader movement to inform Singapore's socio-legal context as well as gay rights advocacy generally.

I used theoretical, purposive sampling to select interview respondents—gay rights activists who are current and former founders, or leaders, or active members involved with implementing strategic decisions and tactics. As explained in footnote 2, I excluded transgender issues from my study because they are different, and gay rights activists usually

41. Merry (1995).

42. Ewick & Silbey (1998); Gilliom (2001).

43. Barkan (1977, 1980, 1985).

44. Kirchheimer (1961); Earl, *supra* note 39.

45. Barkan, *supra* note 38.

46. Hoffman (2008).

47. Beckett & Hoffman (2005). Also see Mather (1998); Hagan (2000).

48. Zemans (1982).

49. See e.g. Vanhala (2012).

50. Barclay *et al.*, *supra* note 23.

51. See note 2.

do not focus on them. I conducted the interviews mainly in English, but occasionally switched between other languages and dialects that commonly surface in everyday conversation with Singaporeans. These are Mandarin Chinese, Malay, Hokkien Chinese, and Singlish, a local type of English that mixes Chinese dialects, Malay, and South Asian languages. Altogether I recruited 100 gay rights activists and collected more than 200 hours of interview data.

For field observations, I selected a mix of events that included run-of-the-mill activities as well as milestones, such as Repeal 377A. In total, I observed more than 150 hours of meetings, talks, exhibitions, religious services, plays, film screenings, and social gatherings. For documentary analysis, I collected 20 years' worth of materials from the start of gay organizing in Singapore. They include activist organizations' materials, political statements on homosexuality, government records, legislation and regulations, reports by the mainstream English-language newspaper,⁵² and counter-campaign materials.

Concurrently with data collection, I conducted data analysis through multiple phases of coding and memo writing, developed a codebook, and carried out two rounds of coding consistency tests. I looked for what respondents and their organizations regarded as the obstacles to activism, including rights mobilization. I paid attention to their characterization of the government and ruling party's treatment of dissent and rights, as well as their perception of political and judicial access. As I analyzed the ways in which these activists surmounted obstacles and reacted to political leaders, a strong pattern of legal resistance emerged. Then I examined the various tactics of legal resistance, and considered how they related to formal rules, that is law, as well as the informal rules or political norms, such as non-confrontation and the state's notion of "social harmony."

4. ANALYSIS AND DISCUSSION

In this section, I analyze Singapore's socio-legal context to foreground the obstacles for rights mobilization. I also examine the socio-legal conditions that specifically affect gays in Singapore to highlight the importance of decriminalization as well as the challenges that gay rights activists face. Together, these first two sub-sections contextualize the tactics of Repeal 377A and its significance.

4.1 Legal and Political Barriers to Rights Mobilization in Singapore

Since the Southeast Asian state of Singapore became independent from the British almost 50 years ago, the People's Action Party ("PAP") has maintained political monopoly.⁵³ Under PAP rule, the island nation managed to achieve economic prosperity, earning the world's sixth highest gross domestic product⁵⁴ and ranking as one of the world's freest economies.⁵⁵ A key factor to which the PAP attributes these achievements is Singapore's abidance by rule of law and, along with that, an independent judiciary that protects private commercial

52. I focused on the *Straits Times*, the only local English-language newspaper that spans the entire period covered by my study—from the late 1980s to the present. Repeal 377A and the counter-campaign mainly targeted local English-language media. Local newspapers in Malay, Mandarin Chinese, and Tamil languages, the other three official languages in Singapore, gave less attention to the controversy; the campaign and the counter-campaign also did not target them, an interesting phenomenon that lies outside the scope of this paper. Also see Chen (2013).

53. In 1963, Singapore joined the Federation of Malaysia to form a new nation made up of former British colonies. It seceded from the Federation in 1965 and became a sovereign state on its own.

54. Central Intelligence Agency (2010).

55. Heritage Foundation (2011).

interests. Indeed, the PAP government has used strict laws and regulations to push through its economic agenda. It has cultivated an indigenous “legal complex”⁵⁶ of well-educated judges, lawyers, and other professionals adept at adjudicating commercial disputes, and has maintained a government rated highly in the world for an uncorrupted culture.⁵⁷

However, such rule of law in the economic sphere has not translated equally into the civil-political realm.⁵⁸ The administration is not known to flout black-letter law openly, but the PAP uses laws and regulations to curtail constitutionally provided civil-political rights and to secure the party’s dominance,⁵⁹ some of which directly affect rights mobilization and the expression of political dissent. For example, the forming of associations is illegal without state approval under the Societies Act. Street protests are prohibited, and the police may order even a single protestor to “move on.” Speech, especially about local politics, race, and religion, is controlled and licensed subject to administrative discretion under the Public Order Act. PAP leaders are known for successfully suing outspoken political opponents and winning huge damages that result in their opponents’ bankruptcy, which then disqualifies them from political office. In addition, local print and broadcast media are tightly controlled through licensing conditions. They are required by the Broadcasting Act and Newspaper and Printing Presses Act to seek state approval of their management appointees and adhere to content codes. The government also makes clear that the local media’s role is to report and not act as watchdog. Hence, local newspapers and broadcasters practice self-censorship, taking care not to engage in critical political speech and shying away from circumscribed content, including homosexuality, which I discuss further below. While Internet regulations and enforcement are less stringent, they carry familiar censorship tones.⁶⁰

For those seeking reform through legislative channels, political access and representation are limited. Since independence, the PAP has dominated Singapore’s unicameral parliament with at least 80% of elected seats. Singapore’s Constitution does not provide for popular referendums, except to determine its sovereignty. All it takes is a two-thirds majority vote in Parliament to amend the Constitution. The PAP thus has amended constitutional provisions to convert single-member constituencies—one vote for one Member of Parliament (“MP”)—into group representation constituencies (“GRCs”), one vote for several MPs of the same party. To contest a GRC, a political party must field the required number of candidates, including a designated racial minority. The winning “team” is elected as a whole, creating a high threshold for political turnover.

I’m not sure. I don’t know the legal process ... Partly I don’t know enough. Partly it’s never—I’ve never heard any success stories.⁶¹

Singapore’s courts lack precedence in upholding constitutional rights; the state usually wins on public interest or national security grounds in such cases. The PAP government

56. Halliday *et al.* (2007).

57. Transparency International (2011).

58. G. Silverstein (2003).

59. Rajah, *supra* note 28.

60. On 1 June 2013, the Singaporean government implemented new Internet regulations that require online news sites that report regularly on Singapore to obtain a licence. It singled out ten news sites based on criteria such as having 50,000 unique visitors from Singapore each month. These websites have to put up a S\$50,000 (approximately US\$39,300) performance bond and take down within 24 hours any story that the authorities deem to be objectionable. The ostensible reason for the new rules was to bring the news sites in line with the licensing regime on newspapers and television news stations and thus hold them accountable according to similar restrictions.

61. Interview, Nina, 50s, university administrator, Singapore, April 2009. The names given to people quoted in this paper are pseudonyms, except for those belonging to public figures.

also has distaste for what it deems to be judicial activism. In one notorious instance, after the judiciary attempted to curtail executive discretion over preventive detention without trial, the PAP-controlled Parliament swiftly passed constitutional amendments and statutes to repeal the law as set out by the judicial decision.⁶² Looking at this track record, Singaporeans have few rights victories in the courtroom from which to learn and find inspiration. Hence, gay rights activists, such as the above respondent, generally do not regard the judiciary as a viable avenue for social change. This was particularly the case before Repeal 377A.

On the international stage, the PAP government fiercely defends the judiciary's independence, because they see it as crucial to Singapore's image as a rule-of-law nation.⁶³ Under its wide laws on contempt of court, the Singaporean state aggressively prosecutes those who raise such criticisms with the offence of "scandalizing" the judiciary's integrity. Legitimacy is also why the PAP relies on legally mandated elections to return to power and, ironically, on popular support to maintain its authoritarian rule. At the same time, the Singaporean state and PAP are unapologetic about Singapore's constitutional rights and human rights record, often publishing official rebuttals in response to allegations by international human rights groups. Although they do care about Singapore's international legitimacy, they do not pursue it to the extent of being seen as caving in to international human rights pressure or jeopardizing what they perceive to be a need to curtail rights in exchange for maintaining political hegemony. Their response to Repeal 377A is one example.

In addition to the formal legal barriers, the political norm of non-confrontation limits rights mobilization. This norm refers to activists' perception of the state and the PAP's perception of their actions. To be confrontational means to oppose the government or the ruling party and connotes openly shaming one's superiors. However, similar to law and society findings on China, the blurry demarcation between "confrontational" and "non-confrontational" depends on changing state interests and activists' interpretations of what they mean from time to time.⁶⁴

Singapore's gay rights activists realize that non-confrontation is key to ensuring their political legitimacy, as the government might link transgressions of the informal rule to violations of formal restrictions and impose legal sanctions. So they avoid deploying outright confrontational tactics, such as street demonstrations. More generally, rights mobilization could be construed as confrontational, since claiming rights is associated with making public demands or criticisms of the state or political leaders. These activists thus downplay any hint of confrontation in their tactics. Instead, they play up the accompanying political norm of maintaining "social harmony," which the PAP portrays as paramount for economic progress, upon which its leaders rely to return legitimately to office.

4.2 *Socio-legal Conditions for Gays in Singapore*

Prior to the 2007 amendments, Singapore's Penal Code contained two provisions that explicitly criminalized same-sex sexual conduct. Section 377, "carnal intercourse against the order of nature," covered both consensual and non-consensual sexual conduct, such as oral

62. Strictly speaking, the government did accept the narrow ruling in *Chng Suan Tze v. Ministry of Home Affairs* on the grounds of procedural defect. Upon their release, however, the detainees were immediately re-arrested and detained with the proper paperwork. Soon after, Parliament amended the Constitution and preventive detention laws to overturn the broader judicial pronouncements legislatively.

63. G. Silverstein (2008).

64. On China, see Stern (2013); Chua & Hildebrandt (forthcoming).

sex and anal sex between different sexes or between men. Section 377A is much wider. As it targets “gross indecency” between men—regardless of the private or public, or consensual nature of the conduct—the provision could extend to non-intercourse scenarios, such as kissing and other displays of physical intimacy. The punishment is imprisonment for up to two years, compared to Section 377’s broad range of life imprisonment or imprisonment of up to ten years, and a fine.⁶⁵ Both provisions, however, have seldom been applied in private, consensual situations, and are most typically used in cases involving non-consent or minors.⁶⁶ There is no similar provision against women.

Besides criminalization, gays in Singapore lack legal protection from discrimination. Singapore’s Constitution provides a general clause on equality in Article 12(1), and specific protection on the bases of race, religion, descent, and place of birth in Article 12(2). However, such constitutional pronouncements do not have the backing of anti-discrimination legislation with concrete legal measures for the redress of grievances. Furthermore, sexuality or sexual orientation is not a specified category that receives even formal recognition in the Constitution. The lack of legal protection from discrimination and recognition of same-sex relations deprives gays of equal protection from domestic violence and equal access to government benefits and services, such as public housing, taxation, inheritance, adoption and parenting, health care and government-subsidized financing, and immigration.

The Singaporean media are prohibited from carrying content that “justifies” or “glamorizes” “lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism [and] transvestism.”⁶⁷ This is a licensing condition imposed on subscription television, free-to-air television, and film distributors and it is found in the programming codes of licences issued to the media companies. Even when films depicting gay lives—without explicit sex scenes—are allowed to be screened, they usually come with age restrictions or zoning rules that limit the screenings to only downtown theatres away from residential hubs.

Surveys by the government, local media, and research institutions overall paint an ambiguous picture of social acceptance of homosexuality in Singapore. For example, a government-sponsored study in 2002 showed that 85% of its 1,481 respondents found homosexuality unacceptable.⁶⁸ According to a newspaper poll of 284 people from ages 12 to 25 in 2007, only 30% objected to homosexuality.⁶⁹ However, a more rigorous survey by a local university found that 68.6% of its randomly selected respondents expressed

65. Section 377 then read: “Whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment for a term which may extend to 10 years, and shall also be liable to fine. Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.” Section 377A reads: “Any male person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years.” Unlike Section 377, which is more commonly found among former British colonies that derived penal statutes from the Indian Penal Code, Section 377A was inherited by only some of its former colonies; see Sanders (2009). The colonial government introduced the provision into Singapore in 1938, basing it on Section 11 of the UK Criminal Law Amendment Act of 1885, the “gross indecency” law used to prosecute Oscar Wilde in the 1890s.

66. Chua (2003). Also see Amirthalingam (2008) and Hor (2012). In the early 1990s, when the police entrapped gay men at cruising grounds, they usually prosecuted with Section 354 of the Penal Code—assault or use of criminal force with the intent to “outrage modesty” (of the undercover officer)—which carries two years of imprisonment, a fine, or caning, or any two of such punishments.

67. See e.g. Free-to-air Television Programme Code.

68. Chen, *supra* note 52.

69. Wong (2007).

negative views towards homosexuals.⁷⁰ My own study of activists suggests that the reactions range from condemnation to full acceptance and support, depending on one's family, race and religion, class, education, and social and professional relationships. Muslims and conservative Christians are known to oppose homosexuality more strongly; interviewees report experiencing or knowing of others who were pressured by conservative churches to undergo "reparative therapy," "treatments" that include social reconditioning, and "conversion" measures discredited by medical and psychiatric professions elsewhere.

4.3 *The Repeal 377A Campaign of 2007*

In November 2006, when the Ministry of Home Affairs announced a series of proposed amendments to the Penal Code, it turned out that Section 377 would be removed. The Ministry's justification was that Section 377's prohibitions on heterosexual relations were no longer relevant in contemporary Singaporean society. However, it would retain Section 377A, effectively singling out men who have physical intimacy with men. Together with the announcement, the Ministry launched a public consultation exercise to solicit feedback on the proposed revisions, a common practice in recent years as part of the PAP's efforts to come across as being more attentive to citizens' views. Gay rights activists who would later lead Repeal 377A first came together to submit response papers objecting to Section 377A's retention.

Half a year went by before the Ministry announced the results of the consultation: it would, nevertheless, keep Section 377A. It noted that opinions were divided but that the majority supported retention, so they had best "let the situation evolve." The Ministry would also submit the Penal Code amendment bill to Parliament for a second reading. Of the three Parliamentary readings of a bill, the second is usually the most substantive, as that is when its contents are scrutinized and debated.

Two activists involved earlier with the response papers, Parker and Morris, sensed that time was running out to make their voices heard. The Ministry's decision to exclude Section 377A's repeal from the amendment bill process meant that their grievances would escape Parliament's attention. Parker and Morris also realized that submitting public consultation papers was a muted gesture. Their papers were posted on the Ministry's public consultation website, but they did not occupy government or public attention. So the two looked around for options and noticed a little-used legislative procedure, the parliamentary petition. It had not been put into action in independent Singapore except once for a private bill. According to Singapore's Constitution and Standing Orders of Parliament, an MP may present a signed parliamentary petition. Afterwards, the Public Petitions Committee is required to consider the petition and submit a report, upon which the sponsoring MP may table a motion for debate.

The petition process fitted what Parker and Morris were seeking to overcome the exclusion of Section 377A from the amendment bill—a state-sanctioned, visible platform and a captive audience. The two set out to find an MP sponsor, someone to present the petition as required by the rules. After profiling a few candidates, they decided on Siew Kum Hong, a Nominated Member of Parliament ("NMP"), whom they had spotted at a few gay rights events. Unlike elected MPs, NMPs do not have political party affiliations and are nominated by a committee

70. Detenber & Cenite (2007).

made up of the Parliamentary Speaker and elected MPs and then appointed by the President. They have no power to vote on Constitutional amendments, supply or money bills, or votes of no confidence in the government, but they have the same power as elected MPs to introduce bills, present petitions, and table motions for debates. The NMP scheme is one of the PAP's efforts to allow but contain dissent, since it started to lose a few Parliamentary seats in the 1980s (though still commanding a clear, super majority) and felt pressured to appease an increasingly questioning middle class.

Having found their MP sponsor, the next issue the activists had to address was numbers. The parliamentary petition did not require multiple signatures. But Parker, Morris, and the rest of the Repeal 377A team felt compelled that they should send Siew into Parliament with at least some degree of popular support. So they launched a signature drive. They reached out to other activists, gay-friendly businesses, friends, and family, and put out press releases online and to the local media. Meanwhile, another campaigner, Zac, and his partner set up Repeal377A.com and disseminated information on the website.⁷¹

4.3.1 *Occupying Government Attention*

Hence, after the government excluded Section 377A from the Penal Code amendments, Repeal 377A activists took advantage of the rules on Parliamentary proceedings to gain alternative access to Parliament. Using the petition, they created a political event that compelled the entire legislative body to pay attention to decriminalization and the broader issue of equal rights for gays in Singapore. Their astute use of legal procedures becomes even more evident when we take into account their interpretations of Singapore's political realities.

From the beginning, Parker, Morris, Siew, and Ai-Mee, who joined them as the third lead petitioner, were clear about their objective. It was to make the legislature take heed of their objection. It was never to win the law's repeal. In fact, they had no expectation that the law could be repealed in this manner. Siew called it "a hobo's chance in hell" that Section 377A would be repealed after the executive branch had already decided on retention. The four had no illusions about Singaporean politics. They knew that the PAP government would not change its position, especially after a challenge as public as a petition to call for the reversal of a decision it had already announced. That would make the government and ruling party come across as weak and vulnerable to the pressure of interest groups. In addition, similar to the convention of English political parties, if a party's whip is not lifted, MPs of that party are expected to vote according to the party line. This means that PAP MPs would follow their party's discipline and vote according to the party's position, which, in Singapore, usually reflects the executive's. Siew, in particular, knew that the PAP party whip would not be lifted on the Penal Code amendment bill; in Singapore, it is hardly ever lifted on any issue. Besides, a parliamentary petition simply means setting out one's grievances and requests for relief. It does not mean that the bill, going on to its second reading, would be altered to accommodate the petition. A petition also does not require Parliament to vote for or against its proposition. It only enables a motion to be tabled to debate the issues raised.

During the second reading of the Penal Code amendment bill, Section 377A dominated Parliamentary debates for two consecutive days, even though it was not officially part of

71. The website team would later submit an Open Letter to the Prime Minister. It was meant to complement the parliamentary petition, but it did confuse some people who thought that the letter and petition referred to the same document.

the bill.⁷² Seventeen out of the 21 MPs who debated the bill considered Section 377A's status and publicly disclosed their positions on homosexuality. In contrast, the debate over whether to enact stricter penal laws against marital rape, unfortunately, did not receive as much attention. Only nine of the 21 MPs discussed marital rape. The contrast is even more poignant considering that the Penal Code amendment bill did contain a partial removal of marital rape immunity. The government proposed lifting the blanket immunity and criminalizing marital rape in cases where legal steps had been taken for formal separation or the dissolution of the marriage, or the woman had applied for legal protection, such as a Personal Protection Order, from violence committed by the husband. Further, compared to Section 377A's repeal, the MPs who debated the issue expressed more support for complete criminalization of marital rape (though they still voted for the amendment as it stood). During the public consultation phase in November 2006, Singapore's women's rights activists also criticized the retention of partial immunity; however, unlike Repeal 377A advocates, they did not invoke the parliamentary petition procedure leading to a motion for debate. Individual MPs were left to decide whether they wanted to give the issue any attention, whereas Repeal 377A had the assurance that at least one person, NMP Siew, would speak up and provoke reaction from others. Whereas marital rape did not generate sustained debate in Parliament about women's rights, the Repeal 377A petition occupied its attention with arguments about decriminalization, transforming the campaigners' grievance into a discourse about gay rights.

4.3.2 *Transformation of Collective Grievance*

The petition opened up political access for gay rights advocates to claim for gay rights and legal reform for the first time. Although gay rights activism can be dated back to the early 1990s, most of those efforts had been inward looking, concentrating on community support, counselling, and social activities. Their occasional, direct engagement with the state was incident-based. They would quibble with bureaucrats or administrators over the specific denial of registration of gay rights activist groups under the Societies Act, or the rejection of a public talk licence. But they had not openly demanded decriminalization or any other kind of general reform for gay rights, not until Repeal 377A. The political event, the petition, enabled activists to frame their grievances in the language of rights and to be heard. In rights-adverse Singapore, the ability to do so safely and with state legitimation is significant. Prior to Repeal 377A, activists shied away from overt usage of right-based tactics and rhetoric. To them, rights "don't work." As discussed in Section 4.1, they had yet to see Singaporean courts act as bastions of rights and liberty; instead, they hear about the PAP's repression of political opponents who agitate for civil-political liberties or who accuse the government of human rights violations.

Repeal 377A resisted these obstacles, creating a safe moment in Singaporean politics to demand that injustice be considered and heard in the language of rights. Besides having a

72. Although Siew submitted the petition before the amendment bill would be read for the second time, the petition had not been reviewed by the Public Petitions Committee by the time the second reading was scheduled for 22 October 2007, which fell on a Monday. Usually, the contents of petitions are not disclosed to MPs until the Committee has presented its report, but the Repeal 377A petition had already been circulated on the Internet and reported in the media. On the preceding Saturday, Siew had a conversation with the House leader, who agreed that the petition and the bill ought to be debated together, as separate debates about each of them without consideration of the other would be artificial.

Parliamentary representative to speak out on their behalf, other MPs who stood up to address Section 377A had to contend with a petition articulated in rights terms, regardless of whether they denied or accepted the petition's claims. The petition's text read, in part:

[T]he continued existence of Section 377A will prejudice the rights and interests of homosexual and bisexual men, in an unconstitutional manner ... Such discrimination infringes the right of homosexual and bisexual men to equal treatment by and protection before the law, as set out in Article 12(1) of the Constitution of the Republic of Singapore ... We are respectfully requesting that Parliament uphold this fundamental principle, and extend equal protection to all Singaporeans in respect of their private consensual sexual conduct, regardless of their sexual orientation.

As the campaign unfolded with media coverage, the signature drive, and the Parliamentary debates, contestation over the meaning of equal rights ensued. Opponents of homosexuality from the Christian right fired back. This was less expected by gay rights activists. Prior to Repeal 377A, conservative Christian opponents confined their objections to church sermons and "therapy" programmes. The petition campaign became the first public conflict between the two sides, perhaps because the prospect of repeal heightened the opponents' perception of a threat to their interests.⁷³ They wrote letters to the press, claiming that their anti-gay views represented the majority's. Two websites, *Keep377A.com* and *Support377A.com*, resembling *Repeal377A.com* in design, appeared in October 2007 and publicized an online signature drive for an Open Letter to the Prime Minister. Then the contest made its way to the Parliament floor, where Thio Li-Ann, another NMP and human rights law professor, spoke out against repeal. Her speech referred to the Bible, framed Repeal 377A's issue as there being "no constitutional right to homosexual sodomy" and accused "homosexual activists" of "hijack[ing]" and "discrediting" human rights meant to aid "the weak and poor"—rhetoric that resonated with law and society findings on attempts by American right-wing activism to delegitimize gay rights and other minority claims.⁷⁴

To be clear, the rights-based arguments were limited mainly to the petition's central claim that Section 377A violated the constitutional right to equal protection. With a few exceptions, Repeal 377A's supporters and opponents mainly deployed other reasons, such as public health, "family values," "morality," and religion to articulate their positions. Even with Repeal 377A leaders, rather than elevate their claims from a constitutional rights matter to a question of human rights, they packaged their rights-based arguments to make them more palatable to the PAP and government. In particular, they emphasized that acceptance of diversity was the cornerstone of social harmony, an important rhetoric typically dispatched by the ruling party and the government against social discontent or dissent. It was also why Parker and Morris recruited Ai-Mee, a married, straight woman who has a gay brother and was pregnant at the time, to front the message that Repeal 377A affected non-gays as well.⁷⁵

Nevertheless, these other arguments from all sides were triggered by and revolved around the campaign's mobilization for equal rights, and Singapore's legislators were asked to consider competing arguments. In the end, the resolution was compromise, one that Repeal 377A activists felt was an important victory. After two days of debate, the Penal Code

73. Meyer & Staggenborg (1996).

74. For an analysis of the development of Christianity in Singapore, including the decline of liberal theology and the rise of conservative churches, see Goh (2010).

75. These limitations will be considered in the "Conclusion."

amendment bill without the repeal of Section 377A sailed through its second reading (and would enter into law upon the third). Among the 21 MPs who spoke about the bill, only three of them, discounting Siew and Prime Minister Lee Hsien Loong, openly supported repeal. However, as the campaign's high-water mark, the prime minister gave a speech that clarified the state's position on homosexuality: gays have a place in Singaporean society, and Section 377A is not to be enforced against them in consensual, private situations; nevertheless, their interests still may not trump the majority who has yet to accept homosexuality.⁷⁶ This was not a new position, as the state had been relaxing its stance against homosexuality and same-sex conduct since the late 1990s. It had gradually shifted away from outright condemnation to a qualified acceptance, and the police had largely ceased entrapment and raid operations in gay areas.⁷⁷ Besides, prior to the campaign, the prosecution mainly applied Section 377A to cases involving non-consent or minors.⁷⁸ With the prime minister's statement, this practice was crystallized into what became known as the non-enforcement policy.

4.3.3 *Legitimizing Local Media Attention*

[T]he press had to cover it. And for once their so-called objectivity worked against them, and they had to present at least more pro-gay views, which was again a first, a huge, huge first.⁷⁹

The use of parliamentary procedures expanded local media coverage on the struggle over Section 377 and, consequently, its scope of contagion.⁸⁰ Older activists remember when local newspapers had only two kinds of reports that referred to homosexuality in the early 1990s—news about police entrapment at gay cruising grounds complete with the full names and photos of arrestees, and stories about sexual predators or the mentally ill. Since then, coverage of gay activism and issues in Singapore had improved,⁸¹ but even friendly reporters and editors remained cautious about providing too much positive coverage before Repeal 377A. After all, they are bound by their licences, attached to content codes that forbid the portrayal of homosexuality in “normalizing” or “positive” ways. They could come across to authorities as being too blatantly political, risk violating the political convention that local media's role is only to report, not stand for any issue, and suffer regulatory ramifications.

Creating a political event to gain access to Parliament changed the situation. The petition was news. In fact, it was part of parliamentary proceedings that local media licensing conditions obliged them to report. Repeal 377A activists thus made it safe for state-controlled media, especially the English newspapers where the contestation mostly took place,⁸² to publish more sophisticated discussions about gay equality and homosexuality. The campaign also organized activities around the petition specifically for media consumption. Morris, Parker, and Ai-Mee spoke readily to local reporters. The website team produced and posted a professional video on YouTube, featuring local personalities rapping to original lyrics

76. See Chen, *supra* note 52, for a public choice theory explanation of the state's position.

77. Chua, *supra* note 29.

78. See note 66.

79. Interview, Winston, 30s, public school administrator, Singapore, June 2009.

80. Schattschneider (1975).

81. Also see Chua, *supra* note 29.

82. For content analysis of Malay- and Chinese-language newspapers, see Chen, *supra* note 52.

that carried a similar message. After the parliamentary debates, the three leaders held a post-petition press conference and released further statements.

One consistent pattern from the data is the spike in media coverage during Repeal 377A's campaign period. Compared to previous years, media coverage on local gay issues multiplied by nearly three times in 2007. Of all the *Straits Times* newspaper articles about gays or gay rights locally in 2007, two-thirds of them concerned Section 377A or the repeal petition. These reports went on to trigger subsequent rounds of responses, spurring an ongoing public discourse. People with a wide range of views wrote "letters to the editor" in reaction to the media reports and later to other letters. Some were pro-repeal, some were cautious, and others were anti-gay. In the spirit of objectivity—or to avoid being seen as taking a political stand—the newspaper featured a diverse selection of these views.⁸³

4.3.4 *Building Community and a Support Base*

[P]eople who went around on their own accord, didn't know anybody, not connected to anybody—because they felt it was so right, they went around collecting 50 signatures, 100 signatures, and all these little stories of the mother, the aunt, the old lady ... they signed the petition.⁸⁴

With the simple, common purpose of penning one's signature onto a sheet of paper, the petition process strengthened a sense of community among gays in Singapore and built a broader support base of non-gays. For a signature to be officially accepted, it has to be handwritten and submitted on an original, hard copy of the petition. By the time the Repeal 377A team initiated the petition, it was already early October 2007; the Parliamentary reading of the Penal Code amendment bill was scheduled for 22–23 October. Pressed for time, activists and their supporters, gays and non-gays, spent the subsequent 14 days canvassing workplaces, schools, and popular bars.

Gay-friendly businesses volunteered to be designated collection centres. Overseas Singaporeans hired courier services to deliver their signatures back to the collection centres. Some Singaporeans living in nearby countries travelled home to turn in theirs. Touching stories abound about how family members signed right next to their gay son's, daughter's, or sibling's names. One activist told me that he reserved a petition sheet especially for his and his mother's signatures and would not let anyone else sign on it.

Within two weeks, the campaign amassed 2,519 signatures. On 16 October 2007, a week before the bill's second hearing, Siew walked into Parliament to submit the petition.⁸⁵ It was a historic moment. For the first time in post-independence Singapore, a Parliamentary petition was submitted with popular support. It was also the second time in history that a petition was submitted through this procedure.

4.3.5 *Lessons and New Pathways*

Gay rights activists in Singapore—those involved and not involved with the campaign—emerged from Repeal 377A with a more nuanced understanding of the politics surrounding repeal and the ruling party's position on homosexuality. They learned that repeal would be

83. English-language debates on the Internet were fast and furious, but the phenomenon is remarkable in the local mainstream media, because they are more tightly regulated and sieve through public opinion more cautiously.

84. Interview, Ai-Mee, 40s, stay-at-home mother and former lawyer, Singapore, April 2009.

85. The official number was 2,341, which may have been a result of disqualifying illegible signature entries.

controversial and cost the PAP political capital. They also experienced the ability of Christian right opponents—in spite of being a minority of a minority religion in Singapore⁸⁶—to rouse panic and fear among parents, a formidable constituency among PAP electorates. While they believe that Lee Kwan Yew, Singapore’s influential former prime minister, his son and current prime minister, and others within the PAP’s top ranks are not religiously driven, they recognize that conservative Christian elites dominate a faction of the party. Rather than risk political capital within the ranks and with the populace, the PAP leadership negotiated the compromise of a non-enforcement policy, despite the potential cost to international legitimacy.

Bearing these lessons in mind, gay rights activists shifted their tactics and developed two new paths of advocacy following Repeal 377A. First, the legislative and executive reactions to repeal signalled that Parliament and the administration would not push through Section 377A’s abolishment unless they perceived so-called mainstream values to have shifted in favour of doing so. Short of conducting a reliable study of the Singaporean populace,⁸⁷ activists realized they could nevertheless show that their cause promoted the familiar political norm of maintaining social harmony. Hence, since Repeal 377A, one branch of gay rights activism in Singapore has turned toward creating and demonstrating a visible support base of non-gay allies. The grandest effort thus far has been Pink Dot, a pro-gay rally at the only public park in Singapore where the government has allowed speech and assembly without licence.⁸⁸ From an inaugural crowd of 2,000 in the year 2009, the event has grown steadily in numbers up to 21,000 in 2013.

Second, Repeal 377A gave a minority of activists some hope in judicial repeal. Looking at the courts’ track record, gay rights activists generally are pessimistic about winning constitutional rights challenges. However, reading between the political lines uttered during and after the campaign, a minority of them actually exuded optimism about Section 377A’s future in the courts.⁸⁹

[Litigation on Section 377A’s constitutionality] will excuse the government ... They don’t have to come out and say, “Okay, we accept it.”⁹⁰

Believing that at least a faction of PAP’s top leadership was pro-repeal but did not wish to expend political capital, people like the above respondent discerned a preference for the judiciary to resolve the politically inconvenient matter. This view on the ground is in line with studies about the delegation of controversies to the judiciary to avoid political fall-outs in both democratic⁹¹ and authoritarian regimes.⁹² Whether accurate or not, it began to be

86. According to the 2010 Census, about 44% of Singaporeans identify as Buddhist or Daoist, 18% are Christian, 15% are Muslim, and 5% are Hindu.

87. Some gay rights activists have considered commissioning a random household survey but realized that it comes with risks. If the results indicate that the majority of Singaporeans still do not accept homosexuality or decriminalization, then they would provide opponents and the state with further justification to maintain the status quo while sidelining the other important aspect of democracy, which is the protection of minority rights in the face of majoritarian differences.

88. Like the NMP scheme that appointed the Repeal 377A petition sponsor, Siew, the licence exemption at the park was another move by the PAP government to contain dissent.

89. In 2009, when the PAP law minister was asked about the future of Section 377A, he reiterated the non-enforcement policy but went on to say that courts had the power to decide how the provision ought to be interpreted and applied.

90. Interview, Devi, 30s, spiritual counsellor, Singapore, September 2009.

91. Tate (1995).

92. Moustafa (2007); Ginsburg & Moustafa (2008).

tested in 2010, when a man named Tan Eng Hong was arrested for having oral sex with another man in the restroom of a shopping mall, and charged under Section 377A.

Tan's case pried open an opportunity for litigating Section 377A's constitutionality. Parallel to the criminal case, Tan initiated proceedings to challenge the constitutionality of the provision. He later pled guilty to a lesser charge of public obscenity, and the lower courts consequently ruled for the Attorney General that Tan no longer had legal standing to challenge Section 377A.⁹³ However, on appeal, the Court of Appeal decided that a gay citizen, such as Tan, does have legal standing to challenge Section 377A's constitutionality without having to be prosecuted under it. This led Lim and Chee, with the support of a team of gay rights activists, to file a separate case on 30 November 2012, arguing that Section 377A violated the constitutional right to equality. To activists optimistic about judicial reform, whatever the courts decide, the PAP government and party could not and would not be held directly responsible. After all, they had always fiercely defended the independence of Singapore's judiciary.

5. CONCLUSION

Rights mobilization to repeal Section 377A in Singapore did not begin with the court cases of *Tan Eng Hong* and *Lim Meng Suang*. Going back five years earlier, this paper examined a petition campaign that marked the first time activists claimed for gay rights publicly in the rights-adverse, *de facto* one-party state. It built on two core research traditions in law and society, rights mobilization and legal resistance, to examine how activists, by taking advantage of procedural rules to file a parliamentary petition, mounted legal resistance and claimed for redress in the language of rights.

The paper thus extends law and society scholarship to understudied sites where rights mobilization lacks political legitimacy and faces legal and political barriers much higher than those in liberal democratic settings. It illuminates how social actors overcame these obstacles with legal resistance—another area understudied by law and society in relation to activism in authoritarian contexts. Examining these social processes and their consequences is important. Governments do not always repress contention with physical violence and bloodshed. Some of them, including Singapore's and even authorities in democratic states,⁹⁴ turn to law to curtail political access and basic civil-political liberties, such as speech, press, and assembly freedoms, raising the barriers and stakes for mobilizing rights. With the less visible but insidious power of legality, authorities can control social action and deny legitimacy to those who violate it. Yet, as this paper shows, legal power is fluid even under authoritarian conditions.⁹⁵ Although law acts as an instrument of oppression, Singapore's gay rights activists managed to harness its power to aid their cause.

Such mobilization processes produce cumulative and complicated effects that are both favourable and challenging for claimants. On the one hand, legal resistance reshaped and transformed collective grievances.⁹⁶ In Repeal 377A's case, the Parliamentary petition

93. It is unknown to the public how many others in similar situations had pleaded guilty to lesser charges after being arrested for violating Section 377A.

94. See e.g. Fernandez, *supra* note 36.

95. Hoffman, *supra* note 46.

96. Also see note 47.

produced state-sanctioned time and space where it was safe to demand rights. Gay rights activists occupied the ruling party's attention in the legislature, despite being shut out by the administration from the Penal Code amendment process. Being part of Parliamentary proceedings also legitimated coverage by state-controlled media. The signature drive and media publicity expanded the campaign's scope of contagion,⁹⁷ galvanizing both gays and non-gay allies and bringing people together over a common grievance.

On the other hand, the petition provided only limited freedom and capacity to mobilize. Unlike the amendment process, it did not enable the law's repeal, only debates about it. Repeal 377A campaigners and NMP Siew were cautious about their tactics. They confined the rights claims to constitutionally provided rights without escalating them to accusations of human rights violations, an area of tension between the Singaporean state and international human rights organizations. Publicly, they also packaged their messages with the rhetoric of social harmony to avoid accusations of confrontational behaviour.⁹⁸ These constraints revealed the limits of mobilizing rights with legal resistance while tempering mobilization with what activists believe to be politically palatable norms.⁹⁹ They also affirmed the political status quo's control over formal legal processes, which was why Section 377A was left out of the Penal Code amendment bill. Despite the prime minister's articulation of a non-enforcement policy, his position implied that the legislative route of reform was henceforth foreclosed (at least until the PAP-dominated Parliament perceives majority acceptance of homosexuality).¹⁰⁰ In addition, the galvanization and media attention spurred Christian right opponents to fight back¹⁰¹ in a public and organized manner for the first time.

Nevertheless, this paper showed that legal resistance not only constructed the emergence of rights mobilization but also influenced its future, moving gay rights advocacy forward with a better understanding of Singaporean politics. Of course, it remains to be seen whether the Singaporean state and PAP will eventually be persuaded by activists' amassing of popular support and will muster enough moral courage and political will to protect the rights of a minority group. The constitutional cases also test whether the judiciary will become a more robust counter-majoritarian institution that protects constitutional rights. In any event, rights victories in the legislature or courtroom may provoke further backlash from opponents.¹⁰² They may simply be the start of a drawn-out battle, as American states have witnessed in the struggles over same-sex marriage. A long road may stretch ahead for gay rights in Singapore, too.

From these processes of rights mobilization and legal resistance emerge an unusual politics of rights—one under authoritarian conditions. In law and society's conventional account

97. Schattschneider, *supra* note 80.

98. Interestingly, unlike its reaction to the *Chng Suan Tze* ruling (see Section 4.1), the PAP-dominated Parliament did not remove the petition procedure after Repeal 377A. Perhaps the campaign was not offensive or transgressive enough to provoke such a reaction. The procedure, however, has not been used since.

99. Also see Beckett & Hoffman, *supra* note 47.

100. The policy is also a political promise that lacks legal teeth. The prosecution enjoys constitutionally protected discretion to charge a person under Section 377A. Moreover, when arguing *Tan Eng Hong*, the prosecution admitted to having used the provision as a basis for issuing "stern warnings." Section 377A is also used to justify other homophobic policies and practices, such as the censorship rules and the lack of any neutral or affirmative discussion of homosexuality in public school sex education programmes (which have to inform students about the criminal provision).

101. Also see Jasper & Poulsen (1993); Meyer & Staggenborg, *supra* note 73; Andrews (2002).

102. Rosenberg, *supra* note 5.

of the strategic and symbolic power of rights, the contextual nature of rights is usually left unquestioned. But rights are deeply imbricated in social relations.¹⁰³ They have bargaining or symbolic powers because the claimants are embedded within a context where rights have amounted to a master frame¹⁰⁴ so that formal institutions and political leaders accept their means of mobilization to be legitimate. Some degree of acceptance for rights may already exist within the given context, such that the renegeing party may fear formal legal consequences, moral sanctions for violations, or pressure from transnational actors.¹⁰⁵ Under those circumstances, the politics of rights take on the appearance of politics as usual. In pursuing rights, activists appeal to and reaffirm the political legitimacy of rights.

In contrast, Singapore's gay rights activists are embedded in a society where the ideology of rights as political legitimacy is insecure. Even though rights are an imperfect means of redressing grievances (see Section 2), in an authoritarian context where both formal institutions and informal rules severely curtail basic civil-political liberties and political access, their mere public quest is non-conformist. The politics of rights under authoritarian conditions are, therefore, unusual politics. They mean more than fighting for one's intended causes, such as gay equality, gender equality, or environmental protection; they also encompass the struggles and risk-taking of challenging the legal controls and political norms against rights mobilization. By closely examining one such attempt, this paper has suggested how the process may look and what the implications for legal power and resistance may be.

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103. That is, to build on Thompson's (1975) conception of law's relationship to society.

104. Snow & Benford (1992).

105. See e.g. Keck & Sikkink (1998).

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